

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTIN SALDIVAR-TRUJILLO,

Defendant.

Case No. 1:02-CR-213

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Defendant Martin Saldivar-Trujillo's Motion to have prior custody credits deducted from his sentence. Defendant requests 496 days be credited to his sentence for time severed while incarcerated for a state court sentence from February 20, 2002 to February 6, 2003 and while he was in federal custody from February 6, 2003 to the time he was sentenced on June 4, 2004 for being in the United States illegally in violation of 8 U.S.C. § 1326(a). (Mot. at 1-2.) Upon review, Defendant's Motion will be denied due to lack of jurisdiction.

A defendant may receive credit for "time he has spent in official detention prior to the date the sentence commences" pursuant to 19 U.S.C. § 3585(b).. However, in *United States v. Wilson*, 503 U.S. 329 (1992), the United States Supreme Court held that § 3585(b) does not authorize a district court to award credit against a sentence. *Id.* at 333-34; *see also United States v. Westmoreland*, 974 F.2d 736, 737 (6th Cir. 1992). "Rather, the Attorney General, through the Bureau of Prisons, is to make that determination. Review of the Bureau of Prisons' determination is available through the administrative process and ultimately, after the exhaustion of administrative remedies, in the District Court." *Westmoreland*, 974 F.2d at 737. Defendant has made no allegation and submitted no evidence to indicate that he has pursued available administrative remedies.

Therefore, there is no basis which gives this Court jurisdiction to render a decision on this matter and Defendant's Motion must be denied.

THEREFORE, IT IS HEREBY ORDERED that Defendant Martin Saldivar-Trujillo's Motion for Prior Custody Credits Deducted from Sentence (Dkt. No. 45) is **DENIED**.

DATED in Kalamazoo, MI:
August 22, 2005

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
UNITED STATES DISTRICT JUDGE